IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC.CIVIL APPLICATION No 425 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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YAKUBBHAI ADAMBHAI MANSURI

Versus

GOVIND LAXMAN MURUDKAR

Appearance:

1. Misc.Civil Application No. 425 of 2000

MR JT TRIVEDI & MR BJ TRIVEDI for Petitioner No. 1

MR PV HATHI FOR MR SHYAM S SHEVADE for Respondent No. 1

MR NS SHEVADE for Respondents No. 2-3

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE H.H.MEHTA

Date of decision: 10/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

By filing this application under the provisions of the Contempt of Courts Act, 1971 ("the Act" for short), the applicant has prayed to initiate proceedings for contempt of court against the opponents for breach of undertaking dated May 12, 1999 given by opponent no.1 pursuant to directions given by the learned Single Judge of this Court on April 12, 1999 in Civil Revision Application No.613/99 and punish them suitably.

2. The applicant had filed H.R.P. Suit No. 3525 of 1986 in the Small Causes Court, Ahmedabad against opponent no.1 as heir and legal representative of deceased tenant Laxmanbhai Murudkar for possession of suit premises on the ground of acquisition of alternative suitable accommodation as well as arrears of rent. In the written statement, it was, inter-alia, contended by opponent no.1 that the other heirs of deceased tenant Laxmanbhai Murudkar were necessary parties to the suit, but the said contention was negatived by the Trial Court holding that opponent no.1 was a tenant under section 5(11)(c) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ("the Rent Act"). The Trial Court had further held that the opponent no.1 was the person to whom tenancy had been transmitted to the knowledge and consent of other family members. The Trial Court by judgment dated September 30, 1996 decreed the suit in favour of the applicant. Feeling aggrieved by the said decree, opponent no.1 preferred an appeal being Appeal No.147/96 before the Appellate Bench of Small Causes Court. The Appellate Bench dismissed the appeal by judgment and decree dated February 16, 1999. Thereupon the opponent no.1 preferred Civil Revision Application No. 613/99 before the High Court. The learned counsel for the opponent no.1 as well as the applicant were heard and the Court was not inclined to admit the revision application. Under the circumstances, the learned counsel for the opponent no.1 had made a request that adequate time should be granted to the opponent no.1 to vacate the premises in question. The question of adequate time could not be worked out between the learned counsel for the parties and therefore, the matter was left to the discretion of the learned Single Judge. The learned Single Judge was of the view that the opponent no.1 should be given time to vacate the premises upto January 31, 2000 on his filing usual undertaking. Under the circumstances, a request was made on behalf of opponent no.1 to permit him to withdraw the revision application. While permitting the opponent no.1 to withdraw revision application, the learned Single Judge

directed that decree for possession would not be executed upto January 31, 2000 subject to the petitioner-tenant, his wife and adult son filing usual undertaking in the Trial Court on usual terms latest by May 12, 1999 and disposed of the revision application by order dated April 12, 1999. Pursuant to the direction given by the learned Single Judge in Civil Revision Application No.613/99, the opponent no.1 and his wife filed an undertaking before the Trial Court on May 12, 1999. By filing the undertaking, opponent no.1 undertook to hand over peaceful and vacant possession of the suit premises to the applicant on January 31, 2000. Inspite of undertaking filed by opponent no.1 and commitment made by opponent no.1 before the High Court to vacate and hand over possession of the premises to the applicant on or before January 31, 2000, the opponent no.1 did not hand over peaceful and vacant possession of the suit premises to the applicant. According to the applicant, the opponents no.2 & 3, who happen to be daughter-in-law and grand son of deceased tenant Laxmanbhai Murudkar, have filed H.R.P. Suit No.576/99 in collusion with opponent no.1 in the Small Causes Court for a declaration that the decree passed in H.R.P.Suit No. 3525/96 is not binding on them and that their tenancy rights subsist. From the averments made in the application it is evident that opponents no.2 & 3 had filed an application for stay of execution of eviction decree which was ultimately dismissed by the learned Judge, Small Causes Court on September 10, 1999 and Appeal from Order No. 125/99 filed by opponents no.2 & 3 was also rejected by the Appellate Bench of Small Causes Court vide order dated September 21, 2000. It is the case of the applicant that the opponents no.2 & 3 have filed suit in collusion with opponent no.1 and a valid decree passed by the competent court is sought to be disturbed and obstructed undermining the image and efficacy as well as powers of the Court which amounts to contempt of court. What is claimed by the applicant is that the conduct of the opponents is collusive as well as contemptuous and, therefore, they should be strictly dealt with under the provisions of the Act. Therefore, the applicant has filed present application and claimed reliefs to which reference is made earlier.

3. On service of notice, an affidavit-in-reply is filed by opponent no.1 controverting the averments made in the application. In the reply, it is stated by the opponent no.1 that he has vacated the suit premises in the month of November, 1999 i.e. much before the time allowed by the High Court to vacate the premises to the knowledge of the applicant and, therefore, the

application should be dismissed. It is also claimed in the reply that the suit is not filed by the opponents no.2 & 3 in collusion with opponent no.1 and that the said suit is filed by opponents no.2 & 3 in their own right.

4. An affidavit-in-reply is filed by opponent no.2 on behalf of opponents no.2 & 3 mentioning that opponents no.2 & 3 have independent right of tenancy and they have not committed any contempt of court. The opponent no.2 has also filed another affidavit-in-reply dated August 9, 2000 stating that the applicant has filed application for execution of decree against the opponent no.1 and as the present application is filed to nullify interim orders which were passed in favour of opponents no.2 & 3, the same should be dismissed.

5. The opponent no.1 has filed further affidavit-in-reply on August 10, 2000 stating, inter-alia, that he was given to understand that time was granted to him to vacate the suit premises by January 31, 2000 on his filing undertaking to vacate the suit premises only and that he having vacated the suit premises, the application should be dismissed.

6. The opponent no.1 has filed 3rd affidavit-in-reply dated December 11, 2000 mentioning therein that respondents no.2 & 3 who are widow and son of his deceased brother, have filed suit for obtaining appropriate reliefs for which he is not responsible and the contempt application against him being misconceived, should be dismissed. What is claimed in the last affidavit-in-reply is that the applicant was knowing very well that the original tenant was residing with the opponents also who were tenants in common and as opponents no.2 & 3 are claiming their independent right of tenancy, the application should be dismissed. It is also pointed out in the said reply that the opponents no.2 & 3 have filed Civil Revision Application No.1079/2000 against order of the Appellate Bench of Small Causes Court, Ahmedabad vacating interim relief wherein the learned Single Judge of this Court has granted injunction in favour of opponents no.2 & 3 and, therefore, contempt application should be dismissed.

7. The applicant has filed rejoinder affidavit stating, inter-alia, that the opponent no.1 had undertaken before the Court to hand over peaceful and vacant possession of the suit premises on or before January 31,2000 to the applicant and as he has failed to

hand over peaceful and vacant possession to the applicant, the application should be accepted. In the rejoinder what is stated is that walking out of the premises by opponent no.1 in question is tantamount to virtually handing over possession to the opponents no.2 & 3 and, therefore, all the opponents should be hauled-up for contempt of court.

8. We have heard the learned counsel for the parties and taken into consideration the documents forming part of the application. There is no manner of doubt that a decree of eviction is passed against the opponent no.1 and that the said decree has become final between him and the applicant. As observed earlier, the learned Single Judge who was hearing Civil Revision Application No. 613/99 was not inclined to admit the revision application and, therefore, a request was made by the learned counsel for the opponent no.1 that adequate time should be granted to the opponent no.1 to vacate the premises in question. The suggestion made by the learned counsel for the opponent no.1 was accepted by the Court and the Court had granted time to opponent no.1 to vacate the suit premises before January 31, 2000 on his filing usual undertaking along with his wife and adult son before the Trial Court latest by May 12, 1999. In the undertaking which was filed before the Trial Court on May 12, 1999, opponent no.1 had undertaken to hand over peaceful and vacant possession of the suit premises on or before January 31, 2001 to the applicant. The fact that opponent no.1 has failed to hand over possession of the premises to the applicant is not in dispute. The claim advanced by opponent no.1 that in view of the independent tenancy rights which are being claimed by the opponents no.2 & 3, he could not have handed over vacant possession of the premises in question to the applicant and, therefore, the application filed by the applicant against him should be dismissed, is devoid of merits. It is relevant to notice that in the suit filed by the applicant, the opponent no.3 was examined by the opponent no.1 as one of his witnesses and the opponent no.3 was knowing about the proceedings initiated against the opponent no.1 for possession of the suit premises. Further at the time of requesting the learned Single Judge who was hearing Civil Revision Application No. 613/99 to grant time to vacate the suit premises, it was never pointed out by opponent no.1 that the opponents no.2 & 3 were also claiming their independent right of tenancy and were in possession of the suit premises and that he was not able to hand over peaceful and vacant possession of the suit premises to the applicant. Had

the true facts been presented to the Court, the Court would have passed appropriate orders and would not have granted time to vacate the suit premises to the opponent no.1. There is no manner of doubt that opponent no.1 induced the Court to pass an order in his favour on representation of facts which were false to his knowledge. This is a serious misconduct on the part of the opponent no.1 and this conduct has, in fact, interfered with course of justice. The submission that vacating of premises by the opponent no.1 should be treated as compliance of the undertaking filed by him, cannot be accepted. There is distinction between the phrase "vacate" and "hand over peaceful and vacant possession". Delivery of possession is a bilateral act and requires one side to give-up possession and the other side to receive it or accept it; whereas the term "vacate" implies a unilateral act and for that purpose, all that is necessary is that the person in possession should give-up possession. By filing undertaking, opponent no.1 had not undertaken before the Court to vacate the premises, but had specifically undertaken to hand over peaceful and vacant possession of the suit premises to the applicant. In fact, by walking out the premises, the opponent no.1 has virtually handed over possession of the disputed premises to the opponents no.2 & 3 which he could not have done in view of the undertaking. It is relevant to notice that the learned Single Judge had disposed of revision application on April 12, 1999 whereas after lapse of one month, the opponent no.1 had filed undertaking stating that he would hand over peaceful and vacant possession to the applicant on January 31, 2000, but did not think it proper to state therein that he would not be able to hand over possession of the premises to the applicant because the opponents no.1 & 2 are in possession of the suit premises and they are claiming tenancy rights on their own. Therefore, in our view, opponent no.1 has committed wilful breach of not only the order passed by the learned Single Judge of this Court in Civil Revision Application No. 613/99, but has also committed willful breach of undertaking which was filed by him before the Trial Court on May 12, 1999 pursuant to directions given by the learned Single Judge in the revision application.

9. So far as opponents no.2 & 3 are concerned, we find that they have filed suit claiming independent tenancy right in respect of suit premises. In Civil Revision Application No. 1079/2000, opponents no.2 & 3 have prayed following interim relief in term of Para-5(D) of memorandum of revision application :-

"Pending hearing and final disposal of the revision petition,Hon'ble Court may be pleased to issue injunction restraining the respondent from interfering with the tenancy rights of the petitioners of the suit premises bearing M.C.No. 2041/6, Raikhad and S.No.4883 and possession and enjoyment of the said premises in any manner whatsoever."

The learned Single Judge by an order dated October 18, 2000 has issued rule in the revision application and granted ad-interim injunction in terms of Para-5(D) of the revision application. Having regard to the facts of the case and more particularly in view of the order of injunction which was granted in favour of opponents no.2 & 3 by the first appellate court and the interim relief granted by the revisional court, we are of the opinion that it cannot be said that opponents no.2 & 3 have committed wilful disobedience of any order passed by the Court in Civil Revision Application No. 613/99. It is also relevant to notice that opponents no.2 & 3 have not filed any undertaking before any Court assuring the Court that they would hand over peaceful and vacant possession of the suit premises to the applicant. Therefore, the case of the applicant against the opponents no.2 & 3 cannot be accepted.

10. The net result of the above discussion is that the application partly succeeds. It is held that opponent no.1 has committed contempt of court; whereas the application submitted by the applicant against opponents no.2 & 3 is liable to be dismissed and is hereby dismissed.

11. We have heard the opponent no.1, who is personally present in the Court, on the question of sentence. He has pleaded that he is a patient of diabetes and high blood pressure and, therefore, leniency should be shown to him. It is also stated that by filing the third affidavit-in-reply, he has tendered unconditional apology and, therefore, a lenient view in the matter of imposition of punishment should be taken by the Court. We may state that the opponent no.1 has rendered himself in such a position that he is not able to comply with the undertaking at all and it is not possible for him to purge the contempt. The apology which is tendered is neither genuine nor sincere and, therefore, cannot be taken into consideration for awarding light punishment. Because of wrong representation made by opponent no.1 before the learned

Single Judge, execution proceedings which could have been initiated by the applicant immediately, have been delayed and now opponents no.2 & 3 have claimed tenancy rights on their own. On totality of the facts and circumstances of the case, we are of the opinion that interest of justice would be served if the opponent no.1 is punished with simple imprisonment for a term of three months.

For the foregoing reasons, opponent no.1 is sentenced to simple imprisonment for a term of three months.

Office is directed to issue warrant of commitment and detain the opponent no.1 in Civil Jail. Rule is made absolute accordingly with no orders as to costs.

At this stage, learned counsel for the opponent no.1 prays that the order of sentence be kept in abeyance for reasonable time so as to enable the opponent no.1 to approach the higher forum. Having regard to the facts and circumstances of the case, it is directed that the order of sentence shall be kept in abeyance for a period of eight weeks from today so as to enable the opponent no.1 to approach higher forum.

(J.M.Panchal,J.)

(H.H.Mehta, J.)

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